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Building The Wireless Future.

CTIA

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July 23, 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: ***Ex Parte* Presentation**
CC Docket No. 95-185 (Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers) and **CC Docket No. 96-98** (Implementation of the Local Competition Provisions in the Telecommunications Act of 1996)

Dear Mr. Caton:

On Tuesday, July 23, 1996, the attached compendium of CTIA White Papers, with the accompanying cover letter, were delivered to FCC Chairman Reed E. Hundt, Commissioner James H. Quello, Commissioner Susan Ness, Commissioner Rachelle B. Chong and the Commission employees listed below:

Rosalind Allen	Laurence Atlas	Rudolfo Baca
Lauren Belvin	Nancy Boocker	Karen Brinkmann
James Casserly	Jackie Chorney	John Cimko
James Coltharp	David Ellen	Michelle Farquhar
Joseph Farrell	David Furth	Donald Gips
Pamela Greer	Daniel Grosh	Michael Hamra
Regina Keeney	William Kennard	Linda Kinney
Edward Krachmer	Blair Levin	Kathleen Levitz
Jane Mago	Jay Markley	Elliot Maxwell
Pamela Megna	Richard Metzger	Ruth Milkman
John Nakahata	Robert Pepper	Dan Phythyon
Gregory Rosston	David Siddall	David Solomon
D'Wana Speight	Peter Tenhula	Suzanne Toller
Jennifer Warren	Stanley Wiggins	Christopher Wright

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List A B C D E

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter and the attachment are being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Robert F. Roche

Attachments

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JUL 2 3 1996

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Randall S. Coleman
Vice President for Regulatory Policy and Law

July 23 1996

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554-0001

Re: ***Ex Parte* Presentation**
CC Docket No. 95-185 (Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers) and **CC Docket No. 96-98** (Implementation of the Local Competition Provisions in the Telecommunications Act of 1996)

Dear Mr. Chairman:

CTIA has submitted for your consideration a number of White Papers addressing the issue of LEC-CMRS competition, and the crucial role of interconnection in realizing national wireless competition policy. For your convenience, the attached compendium has been prepared, drawing together the essential documents reflecting CTIA's analysis and position on LEC-CMRS interconnection and compensation.

These papers make it clear that, in spite of the apparently pro-competitive posture of some state regulators, a national policy of dynamic telecommunications competition -- including wireless carriers -- cannot depend on state regulators for implementation. Even regulators who recognize the pro-competitive and equitable nature of "mutual traffic exchange" (also known as a "bill and keep" or "reciprocal termination") and either order or approve such arrangements for LEC-CLEC interconnection, will not approve LEC proposals of similar arrangements for LEC-CMRS interconnection. Such refusals are inexplicable other than as "turf"-driven decisions, and constitute a direct challenge to the ideal of a technologically-neutral, competition-driven telecommunications marketplace.

As the papers make clear, the Commission possesses the jurisdictional authority to insure the establishment of an equitable and pro-consumer policy throughout the United States. Indeed, only the Commission can insure this result by retaining the federal regulatory scheme for CMRS and by establishing a nationwide policy favoring LEC-CMRS interconnection and disfavoring excessive LEC interconnection rates.

Sincerely,

Randall S. Coleman

CTIA'S ENCYCLOPEDIA OF INTERCONNECTION: LEC-CMRS WHITE PAPERS, *FIRST SERIES*

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LEC-CMRS Interconnection WHITE PAPER No. 1
First Series

TELECOMMUNICATIONS COMPETITION: IN THE MIDST OF PLENTY, IT'S UNDER ATTACK

June 28, 1996

TELECOMMUNICATIONS COMPETITION: IN THE MIDST OF PLENTY, IT'S UNDER ATTACK

Everyone recognizes the value of competition. Congress, consumers, business users, investors, and wireless service providers recognize that competition generates affordable and innovative products and services to meet consumer needs. The ability of wireless telecommunications carriers to offer such competition is being systematically undermined by those with whom wireless carriers would compete as well as the same public service commissions which should be encouraging such competition.

A HISTORY OF IGNORING PRO-COMPETITIVE POLICIES

For 12 years, the local exchange carriers (LECs) have ignored the FCC's co-carrier policy for wireless providers -- refusing to compensate cellular companies for terminating calls originating on the landline networks. At the same time, these same LECs have insisted upon collecting precisely such charges for terminating calls originating on wireless networks. In some instances, the LECs have extracted from wireless carriers and customers surcharges ranging as high as 16 cents a minute. Even **the average per minute LEC termination charge --3 cents a minute -- is <u>fifteen times</u> the actual cost of terminating this traffic.**[1]

The FCC has repeatedly ruled that wireless-LEC interconnection relationships are carrier-to-carrier relationships, and has emphasized that "we will judge the appropriateness of the given arrangement using as a guide the existing compensation agreements of connecting BOCs and [independent LECs]."[2] Those agreements generally create a <u>mutual obligation</u> to terminate the other's traffic <u>at no charge</u> (called "bill and keep"). During the ten years prior to passage of the Telecommunications Act of 1996, the LECs never lived up to this co-carrier treatment of wireless providers, the states never held them to that standard, and the FCC did not enforce its policy position

THE STATES RULE ON CLECS BUT IGNORE WIRELESS

The state PUCs and the District of Columbia have not helped address the anti-competitive interconnection arrangements imposed on wireless carriers by wireline carriers. Even the states that are adopting pro-competitive telecommunications policies are limiting their reach to new <u>wired</u> (or fiber-based) companies. These "competitive LECs" or "alternative LECs" (CLECs or ALECs) are benefiting from the recognition that interconnection produces benefits for both new entrants and incumbent LECs (ILECs).

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[1]Reply Comments of TRACER, CC Docket No. 95-185, filed March 22, 1996, at p.11

[2]*Declaratory Ruling, The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services,* No. CL-379, 63 RR 2d (P&F) 7, 22 at para 49 (1987), aff'd and clarified on recon., 4 FCC Rcd. 2369 (1989). *See also Report and Order, Cellular Communications Systems,* CC Docket No. 79-318, 86 FCC 2d 469, 496 (1981), *recon.*, 89 FCC 2d 56 (1982); *FCC Policy Statement on Interconnection of Cellular Systems,* 59 RR (P&F) 2d 1276 (1986)

As a result, these policymakers are conducting proceedings that establish or encourage reciprocal compensation by CLECs and ILECs for the termination of traffic originating on each others' networks, and at much lower interconnection rates -- either bill and keep, or a fraction of current interconnection charges applied to Commercial Mobile Radio Service (CMRS) providers.

States Adopting Bill and Keep	States Proposing Bill and Keep
California	Arizona
Connecticut	Colorado
Michigan	
Ohio	
Oregon	
Texas	
Virginia	
Washington	

Notably, in 17 states these proceedings have produced or approved rates for CLEC and ILEC interconnection that average less than one-third of the average rates LECs charge CMRS providers, and are reciprocal. And in eight states, with over 90 million inhabitants, the state PUCs or legislatures have implemented policies of "mutual traffic exchange," or reciprocal termination, in which the effective rate paid by both CLECs and ILECs for terminating local traffic is zero.

YET EVEN THESE PRO-COMPETITIVE STATES HAVE IGNORED LEC-CMRS INTERCONNECTION -- SOMETIMES TELLING WIRELESS CARRIERS THEY HAVE NO JURISDICTION

By limiting themselves to adopting rules for LECs that only address CLECs (and lower their interconnection costs), these PUCs are putting wireless competitors at a marked disadvantage. Wireless pays an average of 3 cents per minute to interconnect with a LEC, while in every state which has recently acted, CLECs pay less, or pay nothing.

In Connecticut, for instance, the state DPUC argues that it cannot regulate LEC-CMRS interconnection because the 1993 amendments to the Communications Act made regulation of wireless entirely an FCC responsibility, and removed state authority.[3] The wireless industry does not fault such an interpretation -- but it means that the FCC MUST fill this regulatory void.

MOVEMENT BY THE STATES TO RE-REGULATE WIRELESS

In its decision not to regulate LEC-CMRS interconnection, the Connecticut DPUC telegraphed its real intentions. In its order providing for initial bill and keep, and possible later mutual cash compensation, for CLECs and ILECs, the DPUC refused to

[3] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, Section 6002(b) (OBRA).

extend similar treatment to wireless carriers -- unless they filed for state certification as CLECs -- and agreed to submit to the entire range of state regulations (rate tariffing, entry certification, annual filing requirements, etc.) that Congress and the FCC preempted (and the courts agreed) as unnecessary and burdensome.[4] The DPUC declared that:

> In the absence of authority to impose local service obligations and responsibilities on wireless carriers, the Department will not authorize mutual compensation between SNET and such carriers. Unless and until a wireless carrier seeks certification in Connecticut as a CLEC, such wireless carrier is limited to the mutual compensation provided for by federal law and the rules and regulations of the FCC, i.e., compensation for interstate traffic.[5]

Even when wireless providers and LECs are able to reach agreements on compensation arrangements, and recognize that the proper jurisdiction for these agreements is federal, the states have stepped in to assert control. Ameritech and Southwestern Bell Mobile Systems reached a mutual compensation agreement in March 1996, which they recognized as "not entered into pursuant to a request for interconnection under Section 251(c)(2) of the Telecommunications Act of 1996 . . . and [which] does not require approval by a state commission under Section 252(3) of the Act."[6] But, under pressure from the Illinois Commerce Commission, the two parties to the agreement deleted their stipulation as to federal jurisdiction, and were forced to submit the revised agreement to the state commission for approval.[7]

If the FCC does not exert its federal authority it puts the CMRS carriers in a Catch-22 situation. They can accept the unacceptable status quo, or they can "voluntarily" submit themselves to re-regulation by the states.

STATE INACTION CAUSES LOSS OF IMMEDIATE CONSUMER BENEFITS

There's a bitter irony in this -- the state agencies that are supposed to advance competition are adopting policies with the opposite result. The District of Columbia and states like Connecticut have used their authority to establish regulations that discriminate against carriers, disregarding the consumer interest in innovative and affordable wireless services.

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[4]*See e.g., Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut, Report and Order,* 10 FCC Rcd. 7025, at 7055-7057 (1995), *aff'd sub nom.* CONNECTICUT DEPARTMENT OF PUBLIC UTILITY CONTROL v. F.C.C., Docket No. 95-4108, (2d Cir. March 22, 1996).
[5]*Decision*, DPUC Investigation into Wireless Mutual Compensation Plans, Docket No. 95-04-04, September 22, 1995, at p.16 (Connecticut Decision).
[6]Agreement Between Ameritech and SOUTHWESTERN BELL MOBILE SYSTEMS for Mutual Compensation for Local Calling in Illinois, March 22, 1996, at Section 7.1
[7]*See* Letter from Thomas E. Wheeler, CTIA, to the Honorable Reed E. Hundt, FCC, June 7, 1996, at p.3.

While alternative wireline competition will develop over time -- wireless is here now. In most states, CLECs still have to build out their systems and begin to develop a broad customer base. In contrast, wireless carriers already have substantial systems in place and rapidly expanding numbers of subscribers. Indeed, over 13% of the American public now uses wireless service.[8]

The Consumer Federation of America has noted that the institution of bill and keep nationally would produce an annual savings to wireless customers in the range of $1 billion. And it would speed the day when wireless can compete head-to-head with local wireline telephone service.

The need for federal wireless policy was reinforced on June 25 when the mayor of the District of Columbia vetoed a measure that would have opened the city's $350 million local telephone market to competition. Amazingly, the mayor's rationale for the veto was his desire to give the local Public Service Commission more power to regulate the business activities of its new competitors. The misguided actions of the Mayor and the actions of some state PUCs send a clear signal that when left alone, the District of Columbia and some states will thwart the intent of Congress to create competitive telecommunication markets.

WIRELESS SERVICES ARE FUNDAMENTALLY INTERSTATE SERVICES -- WHICH STATE REGULATION THREATENS TO UNDERMINE

By their very nature, wireless telecommunications are interstate. Radio waves do not recognize political boundaries, wireless carriers operate across state boundaries, and wireless markets are interstate in nature -- both by design (with respect to PCS) and by evolution in response to consumer needs (with respect to cellular). Over 90% of the American public lives in PCS MTA license areas which are multistate. The re-insertion of state regulation into wireless-LEC relationships risks destroying the vision of a nationwide telecommunications policy dedicated to promoting consumers' interests through competition -- a vision that was at the heart of the 1993 Communications Act Amendments and that was not changed by the Telecommunications Act of 1996.

The new PCS competitors have announced their intention to offer seamless service over multistate regions. They have been particularly critical of the impact differing state PUC interconnection rules and pricing would have on their businesses, particularly their marketing, on top of the long delays they would face if forced into the state interconnection process: private negotiations with LECs, appeal to state PUCs, and final appeal to US courts.[9]

Congress specifically preempted state regulation of wireless in 1993, which it perceived as threatening to undermine competition. Between 1994 and 1995, the FCC

[8] See U.S. Wireless Industry Survey Results: More Than 9.6 Million Customers Added in 1995, CTIA Release, March 25, 1996.
[9] Public Statement of Daniel Riker, CEO, Pocket Communications, June 25, 1996.

conducted seven proceedings examining evidence submitted to it by the states and by wireless service providers, and concluded that the states had not demonstrated that their regulation of wireless were necessary to protect the consumer interest.[10] But the regulatory impulse -- or the regulators' desire for a place in the sun -- is hard to restrain. Connecticut's retaliation against wireless providers is an example of this.

In implementing Congress' mandate, the FCC concluded that: "Success in the marketplace . . . should be driven by technological innovation, service quality, competition-based pricing decisions, and responsiveness to consumers' needs -- and not by strategies in the regulatory arena."[11] But the FCC and the states may force wireless carriers to return to the regulatory arena, where the regulators -- and not consumers -- will make the decision of who can compete in the marketplace or will perish in the hearing room.

THE FCC HAS JURISDICTION OVER WIRELESS SERVICES -- IT MUST NOT DROP THE BALL

Congress has established a solid and separate basis for FCC jurisdiction over wireless carriers and wireless services, predicated upon the differences between those services and traditional landline telephone services and their fundamental technologies

Based on its plenary jurisdiction under Section 332, which was not repealed or amended by the Telecommunications Act of 1996, the FCC made a strong proposal on CMRS-LEC interconnection in December of 1995. Faced with a firestorm of LEC lobbying, the state PUCs have switched gears and claimed that they should and do have jurisdiction over wireless-LEC interconnection And the FCC is reportedly rethinking its position as well.

It is understandable that one group of regulators will be sensitive to the interests of another group of regulators. But "turf" is not a sound basis for public policy, and an unwise and unnecessary surrender of FCC jurisdiction over wireless telecommunications to the states would be disastrous, not only for the wireless industry, but for all telecommunications consumers.

The state commissions have already demonstrated their unwillingness to implement national policy, even with guidance from the FCC. The FCC's interconnection policies already state that wireless carriers are entitled to mutual compensation with LECs. It made these rulings in 1981, 1986, 1989 and 1994 [12] But it has never effectively enforced

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[10] *See e.g., Report and Order,* 10 FCC Rcd. 7025, at 7055-7057 (1995).

[11] 9 FCC Rcd. 1411, at 1420 (1994).

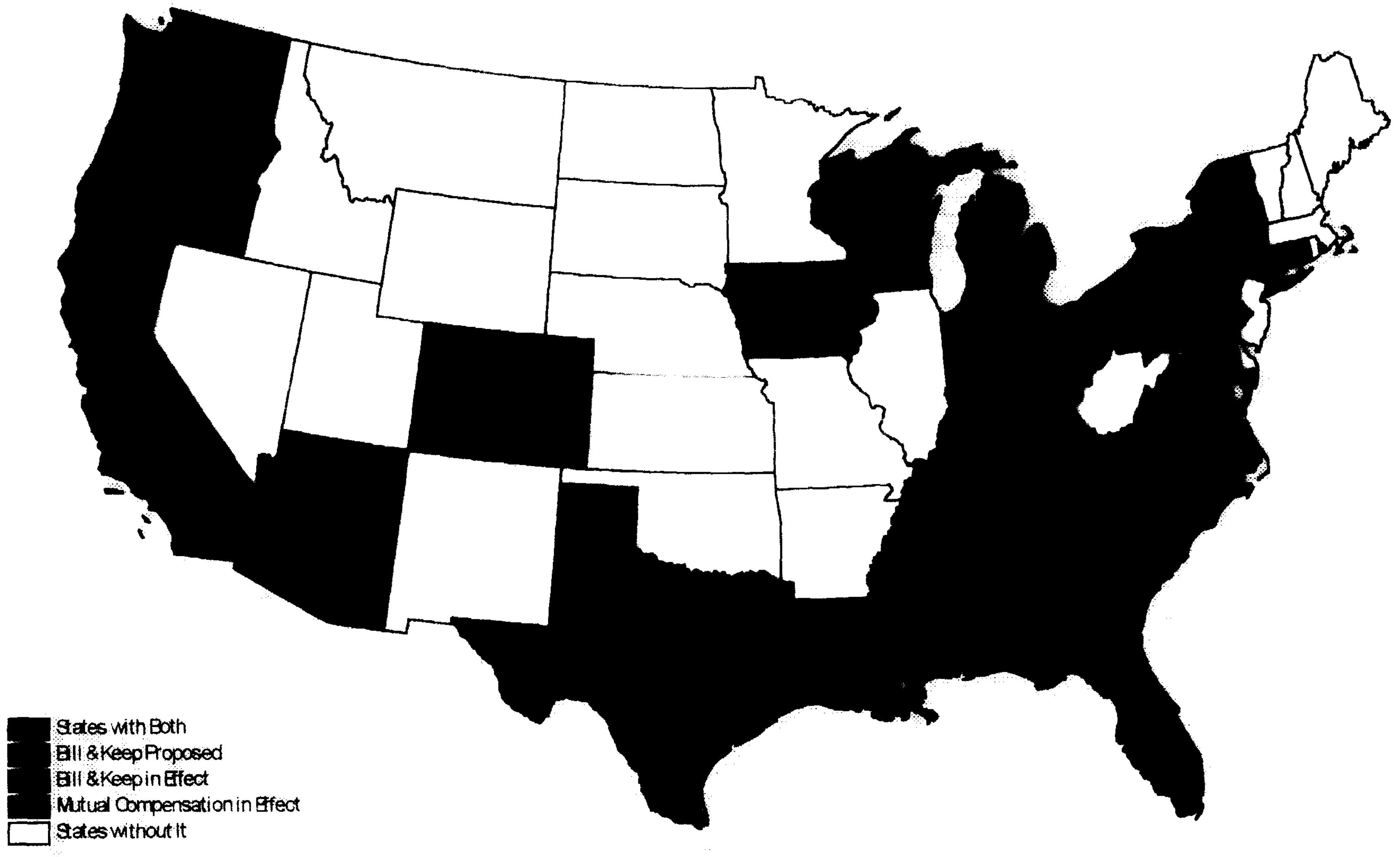
[12] *See Report and Order, Cellular Communications Systems,* CC Docket No. 79-318, 86 FCC 2d 469, 496 (1981), *recon.*, 89 FCC 2d 56 (1982); *FCC Policy Statement on Interconnection of Cellular Systems,* 59 RR (P&F) 2d 1276 (1986);.*Declaratory Ruling, The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services,* No. CL-379, 63 RR 2d (P&F) 7, 22 at para 49 (1987), *aff'd and clarified on recon.*, 4 FCC Rcd. 2369 (1989); *CMRS Second Report and Order, In the Matter of*

this policy, and the states have never complied with it. A toothless restatement of that policy -- or a outright surrender of jurisdiction to the states -- is fruitless. It is essential that the FCC assert federal jurisdiction, recognizing the interstate nature of wireless services.

At their best, state policies are all over the map. In fact, the attached map shows that state regulators have made the map of the US a patchwork of inconsistent regulations. How will consumers -- and how will providers -- be able to reconcile the impact of dissimilar rate regulations across their multistate wireless service areas? The FCC alone can establish a uniform national policy for the wireless industry and wireless consumers. That policy may ultimately mirror (or be mirrored by) the rules and timetables governing wireline services, but it is and must be based on the entirely separate legal authority the FCC has under Section 332 of the Communications Act and it must establish federal authority as the final arbiter.

Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd. 1411, 1499 para. 232 (1994).

Where CLECs Enjoy Reciprocal Treatment Via Mutual Compensation or Mutual Traffic Exchange



WHITE PAPER #2
INTERCONNECTION
JULY 11, 1996

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LEC-CMRS Interconnection WHITE PAPER No. 2
First Series

A BOLD POLICY IS THE BEST POLICY: RECIPROCAL TERMINATION IS PRO-CONSUMER AND PERMISSIBLE

July 11, 1996

A BOLD POLICY IS THE BEST POLICY: RECIPROCAL TERMINATION IS PRO-CONSUMER AND PERMISSIBLE

In December 1995, the FCC tentatively concluded that "reciprocal termination" "represents the best interim solution with respect to [LEC-CMRS interconnection]."[1] The FCC noted that this solution is (1) administratively simple, (2) prevents the abuse of market power by LECs, and (3) is economically efficient.[2] In fact, reciprocal termination is all of these things, and more.

RECIPROCAL TERMINATION OFFERS TO CUT CONSUMER BILLS

The leading business and residential consumer organizations support the FCC's LEC-CMRS **reciprocal interconnection** proposal because it **offers "significant consumer benefits" in the form of lower prices to consumers and the elimination of "the largest current regulatory barrier to the rapid growth of PCS service" and to "wireless competing with local wireline service**."[3]

The **Consumer Federation of America** (CFA) recently said: "**The current compensation regime for traffic exchange is the most anti-consumer, anti-competitive model and is a remaining vestige of monopoly control over the local network.**"[4]

The **Telecommunications Ratepayers Association for Cost-based and Equitable Rates** (TRACER) observed in its Reply Comments: "**for competition to be successful . . . it is essential that rational interconnection policies be adopted**. If new entrants are burdened by unnecessarily high interconnection costs, competition will effectively be precluded from providing any meaningful downward pressure on rates."[5]

The **International Communications Association** said on June 25: "**Failure to enact this proposal would cost business and residential wireless consumers hundreds of millions in annual savings, [and] seriously delay the advent of wireless competition for local telephone service**."[6]

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[1] *Notice of Proposed Rulemaking, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* CC Docket No. 95-185, released January 11, 1996, (*LEC-CMRS Interconnection NPRM*), at para. 60.
[2] *Id.* at para. 61 (in particular, this solution is efficient when (a) traffic is balanced in each direction, or (b) actual interconnection costs are so low as to produce little difference between zero and a cost-based rate).
[3] Letter from Brian R. Moir, International Communications Association, Brad Stillman, Consumer Federation of America, Arthur A. Butler, TRACER, and August Sairnen, Information Technology and Telecommunication Association, to Chairman Reed E. Hundt, and Commissioners James H. Quello, Andrew C. Barrett, Susan Ness and Rachelle B. Chong, March 26, 1996 (emphasis supplied).
[4] Statement of Bradley Stillman, Telecommunications Policy Director, CFA, June 25, 1996.
[5] Reply Comments of TRACER, CC Docket No. 95-185, March 22, 1996, at p.2.
[6] ICA Press Release, June 25, 1996.

The FCC has declared its goal is to remove barriers in order to "stimulate the development of new services and technologies, and create incentives for carriers to lower prices and costs."[7] (At an average of three cents per minute, CMRS payments to LECs total about $1 billion per year.) While the FCC has declared that "competition from PCS, alone, is expected to reduce cellular prices by as much as 40 % over the next two years," reciprocal termination offers to reduce CMRS costs overall by 10 % practically immediately, and set into play powerful competitive forces that promise to change the dynamics of the telecommunications industry.

As the CFA says:

> **As new players come to the wireless market, a reduction in artificially inflated termination charges will provide an increased opportunity for aggressive price competition. Such a downward pressure on rates could help make wireless services more affordable for the residential consumer, for whom these services are currently too expensive. The fact is, if prices decline, the residential consumer will be a significant growth market for wireless services.**[8]

Reciprocal Termination Encourages Efficiency

Reciprocal termination -- under the name of "mutual traffic exchange" or "bill and keep" -- is recognized by many states as a pro-competitive policy for CLEC-LEC interconnection. Reciprocal termination eliminates the need for expensive and time-consuming negotiations and regulatory proceedings to set interconnect rates. Instead, it provides incentives for efficient interconnection, the recovery of costs from each carrier's own customers, and eliminates the demand-reducing effect that a per minute charge of any sort imposes on the traffic of consumers using new local networks.

Separate and Independent FCC Jurisdiction Applies to CMRS-LEC Interconnection and CLEC-LEC Interconnection

The FCC has separate and independent jurisdiction over CMRS-related issues under Section 332 of the Communications Act, as amended by the Omnibus Budget Reconciliation Act of 1993, as the Commission recently found in its *Report and Order* on number portability. Rather than relying upon the grant of authority contained in Section 251(b) of the Telecommunications Act of 1996 (which it used to adopt its LEC/CLEC portability policy), the FCC relied upon its authority under Section 332 as the basis for applying portability to CMRS providers.[9]

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[7] *First Report and Order and Further Notice of Proposed Rulemaking, Telephone Number Portability*, CC Docket No. 95-116, RM 8535, FCC 96-286, released July 2 1996 at para. 158.

[8] Statement of Bradley Stillman, CFA, June 25, 1996.

[9] *First Report and Order and Further NPRM, Telephone Number Portability*, at paras. 4, 7. *See also* 47 U.S.C. Sections 251(b) and 332(c)

The Commission must reject the notion that Section 332 was repealed by Sections 251 and 252 of the Telecommunications Act of 1996. Such a ruling would be inconsistent with the plain language of the Telecommunications Act of 1996, and it would be fatal to the FCC's pro-competitive objectives and Congress' pro-competitive policies. It would fundamentally alter the clear federal jurisdiction promised the parties which paid billions of dollars for PCS spectrum in the last year.

RECIPROCAL TERMINATION IS THE BEST POLICY FOR COMPETITION

In the final analysis, Reciprocal Termination -- whether known by that name, as "bill and keep" or as "mutual traffic exchange" -- is the best policy for a competitive marketplace. As with price caps, reciprocal termination provides incentives for more efficient operations by LECs. Reciprocal termination also prevents the abuse of their dominant market position by LECs, and fosters the provision of competitive services by CMRS providers.

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LEC-CMRS Interconnection WHITE PAPER No. 3
First Series

RECIPROCAL TERMINATION IS NOT AN UNCONSTITUTIONAL TAKING

July 12, 1996

RECIPROCAL TERMINATION IS <u>NOT</u> AN UNCONSTITUTIONAL TAKING

Some LECs oppose the FCC's reciprocal termination (or "bill and keep") proposal as an unconstitutional taking without compensation. It is ironic that LECs, who have used "bill and keep" to exchange calls among themselves for decades, have raised this argument. They know from experience that bill and keep is compensatory and has permitted their networks to grow and prosper.

They also know that if there is a taking, it is the *status quo*. For more than ten years the LECs have charged anywhere up to 16 cents a minute for terminating wireless traffic while paying nothing for connecting their calls to wireless networks. The FCC issued its proposal because it is concerned that the LECs' superior market position and the excessive interconnection fees are impeding the growth of the wireless market. Absent the FCC's proposal, the LECs' uncompensated taking from wireless carriers and users will continue.

Courts look at the following three factors to determine whether an impermissible taking has occurred: (1) the economic impact of the regulation; (2) the extent of interference with investment-backed expectations; and (3) the character of the government action. Each of these three factors weighs heavily in favor of the propriety of the FCC's proposal.

THE RULE WILL HAVE LITTLE OR NO ECONOMIC IMPACT ON THE LECS

An unconstitutional taking occurs when governmental action results in the deprivation of "all economically beneficial or productive use" of private property. As set forth below, the economic impact, if any, from reciprocal termination will be *de minimis*. Even if there is a minor cost associated with terminating wireless traffic, the LECs still will retain the uncompromised ability to use and exploit their networks.

<u>Reciprocal Termination is Not a Taking</u>: Economic experts uniformly agree that it costs LECs next to nothing to terminate traffic. Reciprocal termination merely provides an interconnection model which reflects that fact. Clearly there cannot be a taking where nothing is being taken.

The economic impact is further reduced by the fact that the FCC has merely suggested reciprocal termination as an interim measure. The NPRM does not amount to a permanent physical invasion of anyone's property. In 1987, the FCC ordered that wireless and wireline carriers must provide one another mutual compensation for switching services.[1] The FCC's proposal is a well-reasoned, temporary solution to the lack of mutuality which currently exists. Reciprocal termination maximizes the value and efficiency of both wireless and wireline networks, while adopting an interconnection pricing method which is closer to the real cost of termination than the current method.

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[1] *See Declaratory Ruling, The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 63 RR 2d (P&F) 7, 22 (1987), *aff'd and clarified on recon.*, 4 FCC Rcd. 2369 (1989).

It is quite possible that reciprocal termination will save the LECs money. Several economists believe that the administrative costs associated with tracking and billing for termination costs exceed the actual cost of terminating wireless traffic. Without the FCC's proposal, these administrative costs will grow substantially as wireless and wireline carriers across the country battle over the "right price" for interconnection before the FCC and the courts. The constituency that will suffer will be wireless and wireline users who will have to bear the costs of these never-ending battles. Reciprocal termination nips this problem in the bud.

Reciprocal Termination Compensates the Carriers: Most importantly, even if reciprocal termination constitutes a government taking, the LECs are more than adequately compensated for the use of their networks. Although no money changes hands, this does not mean that termination services are given away free. In order to receive termination services, a carrier must accept the obligation of providing termination for the other carrier's traffic. The Washington Utilities and Transportation Commission ("WUTC") has ruled that "bill and keep is not a system of interconnection for free. Bill and keep is compensatory. There is a reciprocal exchange of traffic in which each company receives something of value."[2] As the WUTC also pointed out: "That bill and keep is a fair compensation method is evident from the fact that it is the dominant current practice between adjacent LECs around the country."

The LECs contend reciprocal termination is unfair because they generate far more calls to wireless users than vice versa. The brief history of Sprint Spectrum, the first provider of PCS services in the United States, demonstrates that this situation is not forever fixed. Sprint Spectrum offers its customers a variety of services which encourages them to give out their phone numbers and accept calls. As a result, traffic to and from Sprint Spectrum's users and Bell Atlantic wireline users is nearly even. Clearly, reciprocal termination would not result in a windfall for Sprint Spectrum.

THE RULE DOES NOT INTERFERE WITH THE LECS' INVESTMENT-BACKED EXPECTATIONS

Reciprocal Termination Does Not Reduce the Value of LEC Investments: Reciprocal termination does little if anything to diminish the value of the LECs' investment in their networks. In fact, contrary to the sky-is-falling predictions of the LECs, reciprocal termination provides wireless and wireline carriers an opportunity to increase usage and thereby increase profits.

Reciprocal Termination Increases the Value of the Network: In fact, by adopting reciprocal termination the LECs get something far more value, the opportunity to encourage and charge for calls from their network to wireless users. Reciprocal termination creates incentives for both carriers to generate more cross-network calls and thereby use their networks more efficiently . The LECs, with phones in almost every home and business, will be able to generate

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[2] *Washington Utilities and Transportation Commission, et al v. U S WEST Communications, Inc.*, Docket Nos. UT-941464, UT-941465, UT-950146 and UT-950265, October 31, 1995, at 36, *aff'd sub nom U S WEST Communications, Inc. v. Washington Util. & Transportation Comm'n*, Case No. 96-2-00177-5 SEA (Wash. Sup. Ct. King County, adopted January 23, 1996).

far more income by creatively encouraging their customers to make calls to wireless users. For example, the LECs could begin offering Calling Party Pays, wireless directory listings, and call completion.

Moreover, in a number of states which have adopted reciprocal termination (also known as "mutual traffic exchange"), provision has been made for a retrospective determination of traffic balance, with an eye to a possible true-up in the event that any gross disparity exists.

Lastly, many of the LECs have substantial investments in prominent cellular and PCS providers. Clearly, their expectation is to maximize the value of these investments. Reciprocal termination is the way to do it.

THE RULE SUBSTANTIALLY BENEFITS THE PUBLIC AND THE CARRIERS

The FCC's overriding goal in proposing reciprocal termination is to maximize the benefits of telecommunications for American consumers. The proposed rule will do just that. For example, by erasing unfair interconnection charges, reciprocal termination should immediately reduce the cost of wireless services by as much as 10%.

Reciprocal termination also will eliminate a crucial barrier to the growth of PCS and other new wireless services. Eliminating burdensome interconnection costs will encourage new entrants to wireless markets and spur them and existing carriers to build out their systems more rapidly. This increased competition will bring additional downward pressure on prices. For examples, Sprint Spectrum already offers more services and lower prices than its cellular competitors.

Finally, reciprocal termination is a crucial first step toward real local loop competition. Wireless has the potential to become an attractive alternative to the LECs for local service, but it cannot do so when the average wireless customer must pay $36 in LEC interconnection charges alone for the same usage which costs a wireline user a total of $19. Take away these connection charges, and wireless can become the first potential market-wide competitor to the LECs if they make the appropriate network expansion.

The LECs, of course, dread competition. Their fears, however, are misplaced. As has happened repeatedly throughout the history of the communications industry, competition will benefit the entire industry. Despite their opposition: newspapers flourished after the advent of radio; radio thrives alongside television; AT&T continues to grow along with its long distance competitors, and so on. Faced with competition, the incumbents rose to the task and actually improved performance. The same thing should happen here. Competition is a great stimulant of investment and innovation, as Congress recognized in the Omnibus Budget Reconciliation Act of 1993 and the Telecommunications Act of 1996. Under the spur of competition, cellular companies have invested more than $24 billion since 1983, and real service rates have fallen by 35%. The wireless market is still growing by leaps and bounds. Subjected to competition, the LECs' growth and performance will accelerate as well